

**STATE OF MICHIGAN
IN THE SUPREME COURT**

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff/Appellant,

Supreme Court Case No. 152534
Court of Appeals Case No.: 325802

v

RYAN SCOTT FEELEY,

Livingston County
Circuit Court Case No. 14-022259-AR
District Court Case No. 14-1183-FY

Defendant/Appellee.

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**APPELLEE'S BRIEF IN OPPOSITION TO
APPLICATION FOR LEAVE TO APPEAL**

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STATEMENT OF JURISDICTIONAL BASIS

Defendant-Appellee accepts and adopts the jurisdictional bases cited in the Plaintiff-Appellant's Application for Leave to Appeal.

COUNTER-STATEMENT OF QUESTION PRESENTED

- I. WHETHER THE PLAIN LANGUAGE OF MCL § 750.81d, WHICH PROHIBITS A PERSON FROM OBSTRUCTING A "POLICE OFFICER," AND PLAINLY DOES NOT INCLUDE A "RESERVE POLICE OFFICER," SHOULD BE EXPANDED AND DEEMED APPLICABLE TO THE ACTIONS OF A PART-TIME, CIVILIAN VOLUNTEER WITH NO CERTIFICATION, TRAINING, OR ONGOING OVERSIGHT BY THE MICHIGAN COMMISSION ON LAW ENFORCEMENT STANDARDS ?**

The District Court has answered this question	"No."
The Circuit Court has answered this question	"No."
The Court of Appeals answered this question	"No."
The Plaintiff-Appellant contends the answer should be	"Yes."
The Defendant-Appellee contends that the answer is	"No."

INTRODUCTION

This case involves the review and interpretation of MCL § 750.81d which reads, in relevant part, as follows:

- (1) Except as provided in subsections (2), (3), and (4), an individual who assaults, batters, wounds, resists, obstructs, opposes, or endangers a person who the individual knows or has reason to know is performing his or her duties is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

* * *

- (7) As used in this section:

(b) "Person" means any of the following:

(i) a police officer of this state or of a political subdivision of this state including, but not limited to, a motor carrier officer or capitol security officer of the department of state police;

* * *

(v) a sheriff or deputy sheriff; and

* * *

(vii) a peace officer of a duly authorized police agency of the United States, including, but not limited to, an agency of the secret service or department of justice.

The Court of Appeals opinion from which the Plaintiff/Appellant seeks appeal clearly states the law in the State of Michigan. The Michigan Legislature, in enacting the Resisting and Obstructing statute, intentionally did not include the term "reserve police officer" in the definition of persons whose lawful orders must be obeyed in order to avoid criminal liability. Plaintiff/Appellant asserts that the Legislature intended a "broad interpretation" of who is to be considered a "police officer" under the Resisting and Obstructing statute, despite the fact that the Legislature specifically names certain classes of persons as falling within said definition and specifically omits reserve police officers from the definition. Plaintiff/Appellant would have this Court change the Resisting and Obstructing statute to

allow reserve police officers to be included in the definition of police officers whose lawful orders must be obeyed in order to avoid criminal liability.

The relevant language within the Resisting and Obstructing statute is plain and unambiguous. As a result, no interpretation is necessary by this Court; rather, any proposed challenge is properly entrusted to the Michigan Legislature. The trial court and the Court of Appeals did not err in so finding. On the contrary, the trial court made the only decision available under the current state of Michigan law. The Court of Appeals affirmed that decision.

COUNTER-STATEMENT OF FACTS

Defendant/Appellee Ryan Feeley was arrested by Brighton Police Department Reserve Officer Douglas Roberts (hereinafter "Roberts") and subsequently charged with Police Officer – Assaulting/Resisting/Obstructing, contrary to MCL § 750.81d, as well as two related misdemeanor counts.¹

A Preliminary Examination was conducted on June 17, 2014 concerning the Resisting and Obstructing charge. Because Reserve Officer Roberts is not certified by the Michigan Commission on Law Enforcement Standards ("MCOLES") and is not a police officer of the State of Michigan or any political subdivision of the State of Michigan, the District Court concluded that Roberts was not a "police officer" that fell within the scope of the protections of MCL § 750.81d. Accordingly, the Resisting and Obstructing charge was dismissed by the District Court.

Although there are factual questions as to whether Defendant/Appellee Feeley actually resisted or obstructed anyone – or even committed a crime – the issue on appeal is whether a reserve police officer is to be included in the definition of "police officer" within the Resisting and Obstructing statute.

On May 4, 2014, Reserve Officer Roberts approached a group of individuals standing outside of a Brighton establishment after being dispatched and advised that there was a physical altercation involving unknown persons. According to Reserve Officer Roberts, upon arrival, he had no description of anybody involved in a fight and had no reason to believe that Defendant/Appellee had committed any crime.² Despite having no reason to

¹ See Preliminary Examination Transcript 6/17/14, at 6.

² Tr. p. 15, 17.

suspect Defendant/Appellee Feeley of having committed any crime, Roberts chased after him and placed him under arrest.³

As the "arresting officer" Reserve Officer Roberts testified that he pursued Defendant/Appellee Feeley and ordered him to get down on the ground.⁴ Mr. Roberts testified that he is a reserve officer, dispatched to fill-in "three times" a month when full-time MCOLES-certified officers are sick or away on vacation.⁵ Roberts testified that, as a reserve officer, he had limited authority to act and could do so only in the presence of a full-time MCOLES-certified officer.⁶ Despite his testimony and repeated recitation of the fact that Roberts attended a sixteen-week academy, neither the State of Michigan nor MCOLES has a reserve police officer academy. Roberts admitted that, at the time of Defendant/Appellee's arrest, he was not a police officer, as he was not MCOLES certified.⁷ Simply put, Roberts was not a police officer at the time he came into contact with Defendant/Appellee.⁸

In essence, Roberts is a volunteer that has been afforded an opportunity to wear a uniform, ride in a police cruiser and assist the "full-time officer" for things "that might occur" while he is volunteering.⁹ Roberts has no inherent police authority as a result of his lack of MCOLES certification. Therefore, and as it relates to the state statute pursuant to which Defendant/Appellee has been charged, MCL § 750.81(d) , the Resisting and Obstructing police officer charge is inapplicable as Roberts is not a defined "person" within that statute.

³ Tr., p. 17.

⁴ Tr., p. 19.

⁵ Tr., p. 24-25.

⁶ Tr., p. 5.

⁷ Tr., p. 19.

⁸ Tr., p. 20.

⁹ Tr., p. 5.

LEGAL ARGUMENT

- I. The Resisting and Obstructing statute, MCL 750.81d, prohibits a person from resisting a police officer. Defendant was charged with Resisting and Obstructing a police officer on or about June 17, 2014. Although the arresting officer wore a uniform and carried a gun, Mr. Douglas Roberts did not receive the training of certified police officers, did not graduate from the police academy and is not certified by MCOLES. Because the plain language of the statute does not contain any language expanding the scope of the meaning "police officer" to include reserve officers, the district court did not err in dismissing the Resisting and Obstructing charge and holding that a reserve police officer is not included in the scope of the Resisting and Obstructing statute.**

A. Standard of Review

Defendant/Appellee adopts the standard of review as set forth in the Plaintiff/Appellant's Application for Leave to Appeal. This issue involves statutory construction. "This Court reviews de novo issues of statutory interpretation."¹⁰

B. The Plain Language of MCL § 750.81d Disallows the Interpretation that a Volunteer Reserve Officer is a Police Officer

Defendant/Appellee was charged with Resisting and Obstructing a Police Officer, in violation of MCL § 750.81d(1). The Trial Court determined that Reserve Officer Roberts is not a "police officer" as defined by MCL § 750.81d(7). Although Reserve Officer Roberts testified that he carries a weapon, wears a uniform and serves at the pleasure of the Chief of Police for the City of Brighton, Officer Roberts conceded that his reserve status does not fit within the definition of a "person" under MCL § 750.81d(7). Relevant to the present matter, there are three subject definitions of persons that may not be resisted or obstructed:

(i) a police officer of this state or of a political subdivision of this state including, but not limited to, a motor carrier officer or capitol security officer of the department of state police;

* * *

(v) a sheriff or deputy sheriff; and

* * *

¹⁰ *In re MCI*, 460 Mich 396, 413; 596 NW2d 164 (1999).

(vii) a peace officer of a duly authorized police agency of the United States, including, but not limited to, an agency of the secret service or department of justice.

Contrary to the assertions of the Plaintiff/Appellant, reserve police officers are not "simply a smaller subset of the generic class of police officers." Reserve police officers do not receive the same training as full time police officers, do not have the unilateral authority to independently enforce the laws, and, most importantly, as is the case with Reserve Officer Roberts, did not receive certification from MCOLES. Moreover, the soldier analogy utilized by the Plaintiff/Appellant rings hollow. For instance, applying the same rationale as that used by the Plaintiff/Appellant a person who goes through basic first year medicine courses, takes an oath to abide by the canons of medical ethics, wears a white coat, carries a scalpel, but drops out of medical school after the first year is not considered a "doctor," because that person did not get the "training" and "accreditation" needed to practice medicine. The same analogy is applicable here. Reserve Officer Roberts did not go to the regular police academy, did not receive police training given to certified officers and is not certified by MCOLES. Just like the foregoing medical school dropout is not a "doctor," Reserve Officer Roberts is not a "police officer."

It is well settled in Michigan that "if the statutory language is plain and unambiguous, then no judicial interpretation is necessary or permitted, and we presume that the Legislature intended the meaning it plainly expressed. Further, effect must be given to every word, phrase, and clause to the extent possible."¹¹ As this Court has repeatedly made clear, "[t]he words used in the statute are the most reliable indicator of the Legislature's intent and should be interpreted on the basis of their ordinary meaning and the context within which they are

¹¹ *People v Mattoon*, 271 Mich App 275, 278; 721 NW2d 269 (2006).

used in the statute."¹² Part of this contextual analysis means avoiding any "construction that would render any part of the statute surplusage or nugatory."¹³

In the present case, MCL § 750.81(d) does not include nor define a "reserve police officer." The text of the statute makes clear that the Legislature did not intend to cover reserve police officers under the class of persons protected pursuant to MCL § 750.81(d). Having acknowledged that he lacks the MCOLES certification to be considered a Police Officer, Roberts is a volunteer that has been afforded an opportunity to dress in a uniform and wear a badge. As a reserve employee, he has no independent authority to detain or arrest any person. Accordingly, the statute is inapplicable to acts of such reserve employee.

C. The Court of Appeals Opinion Properly Found that the Legislature Did Not Intend a Broad Meaning to Apply to the Term "Police Officer"

The Court of Appeals properly opined that the Legislature did not intend for a broad meaning to apply to the term "police officers" in recognizing that the Legislature specifically defines certain subsets of persons (i.e. university police officers, sheriff's deputies, and federal conservation officers) who are covered under the definition of "police officer." The Court need not "analyze or define" what a "police officer" is, as Plaintiff/Appellant would have this Court believe. Rather, the Court of Appeals concluded that the statute's clear terms do not apply to the failure to obey the order of a reserve police officer. As the Court of Appeals properly recognized: "[t]he term "police officer" in the resisting and obstructing statute is markedly narrower. If the Legislature had intended "police officer" as used in the statute to read so broadly, it would not have needed to include a lengthy list of law enforcement professionals to whom the law applies, notably omitting reserve police officers.

¹² *Dep't of Envtl Quality v Worth Twp*, 491 Mich. 227, 237-238; 814 NW2d 646 (2012).

¹³ *Id.* at 238.

Plaintiff/Appellant argues that in so holding, the Court of Appeals "improperly turned an expansive canon into a restrictive one." First, Plaintiff/Appellant's claim is one-sided, ignoring subsequent case law holding that the term "includes" can be one of enlargement or limitation, depending on the context. By way of example, in *Frame v Nehls*, this Court held that "[w]hen used in the text of a statute, the word 'includes' can be used as a term of enlargement or of limitation, and the word in and of itself is not determinative of how it is intended to be used."¹⁴

In the Resisting and Obstructing statute, the term "include" is used in a definitional manner. It defines who falls within the definition of a "person" under MCL 750.81d(1). Nowhere in the definition of "person" is there any indication that reserve officers are contemplated for inclusion by the Legislature. Thus, when viewed in the proper context, the term "include" was intended by the Legislature to be one of limitation.^{15 16} In the Resisting and Obstructing statute, the term "include" must be read as a term of limitation and list of who is to be defined as a police officer under MCL 750.81d(1) was meant to be an exhaustive list by the Michigan Legislature.

II. The Michigan Commission of Law Enforcement Standards Provides the Most Relevant Definition of a Police Officer

Defendant/Appellee submits that the language of the resisting and obstructing statute is clear and unambiguous. By its terms, the statute applies only to those individuals defined as "police officers." To the extent the statute is clear, this Court must enforce the intent of the Legislature, without the need to resort to judicial interpretation.

¹⁴ *Frame v Nehls*, 452 Mich 171, 178-179, 550 NW2d 739 (1996).

¹⁵ See also *Cashman v. Dolce Int'l* 225 F.R.D. 73 (D. Conn. 2004) (finding that "include" can be construed as restrictive and definitional).

¹⁶ *Random House Webster's Unabridged Dictionary* 967 (2d ed. 2001) as defining "include" to mean "to contain, as a whole does parts or any part or element").

Should the Court look outside of the Resisting and Obstructing statute for guidance on the definition of a "police officer" the proper review must be within the statute addressing the Michigan Commission On Law Enforcement Standards – the agency responsible for the oversight of police officers in the State of Michigan. MCL § 28.601 *et. seq.* To that end, the statute provides in relevant part:

"Police officer" or "law enforcement officer" means, unless the context requires otherwise, any of the following:

- (i) A regularly employed member of a law enforcement agency authorized and established pursuant to law, including common law, who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of this state. Police officer or law enforcement officer does not include a person serving solely because he or she occupies any other office or position.

MCL § 28.601(1)(i).

Further, MCL § 28.609(1) provides:

The commission shall promulgate rules to establish law enforcement minimum standards. ***The rules do not apply to a member of a sheriff's posse or a police auxiliary temporarily performing his duties under the direction of the sheriff or police department.*** (Emphasis added).

Finally, MCL § 28.609(5) provides:

Except as otherwise provided in this section, a regularly employed person employed on or after January 1, 1977 as a member of a police force having a full-time officer ***is not empowered to exercise all the authority of a peace officer in this state, or be employed in a position for which the authority of a peace officer is conferred by statute, unless the person has received certification under section 9a(1).*** (Emphasis added).

In considering the above, two fundamental principles must be accepted in reviewing the definition of a police officer under the MCOLES statute. First, the MCOLES statutes does not, at any point, reference a reserve officer. In fact, reserve officers do not fall within the jurisdiction of MCOLES. Second, and more directly related to Reserve Officer Roberts in

this case, Roberts cannot be considered a police officer, nor even a peace officer, unless he has received certification from MCOLES.

Reserve Officer Roberts was very clear in his testimony in the Trial Court that he is not MCOLES certified and does not fit into any category of who is to be considered a police officer under the Resisting and Obstructing statute.

III. Legislation Presently Pending Before the Michigan Legislature Specifically Excludes Reserve Police Officers from MCOLES Definitions.

Senate Bill 411 is currently pending in the Michigan Legislature. In relevant part to the present matter, the proposed amendments provide:

(ii) "Law Enforcement Officer" does not include any of the following:

* * *

(T) A reserve officer.

It is apparent that reserve police officers, while perhaps helpful in community-related activities (e.g., crowd control at parades), have significantly overstepped their legal authority. The state agency tasked with overseeing law enforcement activities, recognizing such action by reserve police officers and municipalities utilizing them, is relying on the Michigan legislature to rectify this action.

RELIEF

WHEREFORE, Defendant–Appellee Ryan Scott Feeley respectfully requests that the Appellants’ Application for Leave to Appeal be denied.

Dated: November 23, 2015

Respectfully submitted,

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